

AMENDED IN ASSEMBLY SEPTEMBER 5, 2003

AMENDED IN ASSEMBLY AUGUST 28, 2003

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE MARCH 28, 2003

SENATE BILL

No. 599

Introduced by Senator Perata

February 20, 2003

An act to add Section 851.90 to the Penal Code, relating to drug diversion.

LEGISLATIVE COUNSEL'S DIGEST

SB 599, as amended, Perata. Drug diversion: sealed records.

Existing law authorizes the sealing of certain records in connection with the dismissal of charges, as specified.

This bill would provide that whenever a person is diverted pursuant to a drug diversion program administered by a superior court or is admitted to a deferred entry of judgment program for specified drug offenders, the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the records of the arresting agency and related court files and records with respect to the diverted person, the judge may order those records and files to be sealed, as specified. The bill would provide that the Department of Justice shall continue to be able to maintain and

disseminate any records or documents received or maintained by it, as authorized by law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 851.90 is added to the Penal Code, to
2 read:

3 851.90. (a) (1) Whenever a person is diverted pursuant to a
4 drug diversion program administered by a superior court pursuant
5 to Section 1000.5 or is admitted to a deferred entry of judgment
6 program pursuant to Section 1000, the person successfully
7 completes the program, and it appears to the judge presiding at the
8 hearing where the diverted charges are dismissed that the interests
9 of justice would be served by sealing the records of the arresting
10 agency and related court files and records with respect to the
11 diverted person, the judge may order those records and files to be
12 sealed, including any record of arrest or detention, upon the
13 written or oral motion of any party in the case, or upon the court's
14 own motion, and with notice to all parties in the case.

15 (2) If the order is made, the clerk of the court shall thereafter
16 not allow access to any records concerning the case, including the
17 court file, index, register of actions, or other similar records.

18 (3) If the order is made, the court shall give a copy of the order
19 to the defendant and inform the defendant that he or she may
20 thereafter state that he or she was not arrested for the charge.

21 (4) The defendant may, except as specified in subdivisions (b),
22 (c), ~~(d), and (e)~~ and (d), indicate in response to any question
23 concerning the defendant's prior criminal record that the
24 defendant was not arrested or granted statutorily authorized drug
25 diversion or deferred entry of judgment for the offense.

26 (5) Subject to subdivisions (b), (c), ~~(d), and (e)~~ and (d), a record
27 pertaining to an arrest resulting in the successful completion of a
28 statutorily authorized drug diversion or deferred entry of judgment
29 program shall not, without the defendant's permission, be used in
30 any way that could result in the denial of any employment, benefit,
31 or certificate.

32 (6) Sealing orders made pursuant to this subdivision shall not
33 be forwarded to the Department of Justice to be included or notated



1 in the department's manual or electronic fingerprint image or
2 criminal history record systems. Any sealing order made pursuant
3 to this subdivision and received by the Department of Justice need
4 not be processed by the department.

5 (b) The defendant shall be advised that, regardless of the
6 defendant's successful completion of a statutorily authorized drug
7 diversion or deferred entry of judgment program, the arrest upon
8 which the case was based shall be disclosed by the Department of
9 Justice in response to any peace officer application request, and
10 that, notwithstanding subdivision (a), this section does not relieve
11 the defendant of the obligation to disclose the arrest in response to
12 any direct question contained in any questionnaire or application
13 for a position as a peace officer, as defined in Section 830.

14 (c) The defendant shall be advised that, regardless of the
15 defendant's successful completion of a statutorily authorized drug
16 diversion or deferred entry of judgment program, the arrest upon
17 which the case was based shall be disclosed by the Department of
18 Justice or the court in which the matter was heard in response to
19 any subsequent inquiry by the district attorney, court, probation
20 department, or counsel for the defendant concerning the
21 defendant's eligibility for any statutorily authorized drug
22 diversion or deferred entry of judgment program in the future.

23 (d) A sealing order made pursuant to this section shall not apply
24 to any record or document received or maintained by the
25 Department of Justice; the court shall advise a defendant that,
26 notwithstanding the issuance of a sealing order pursuant to this
27 section, the Department of Justice shall continue to be able to
28 maintain and disseminate any records or documents received or
29 maintained by the department, as authorized by law.

